IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

WRIT PETITION NO. 1136 OF 2006

H.R.B.H. Siddiqui ... Petitioner.

V/s.

Brihan Mumbai Electric Supply and Transport Undertaking & Ors. ... Respondents.

....

Mr. F.L. Berarwalla with Ms. R.M. Vaity for the Petitioner.

Mr. S.K Talsania, Sr. Advocate with Mr. J.S. Saluja i/b. M.V. Kini for Respondent Nos.1 and 2.

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WITH

WRIT PETITION NO. 1281 OF 2006

B.M.C. through the General Manager
BEST undertaking. ... Petitioner.

V/s.

H.R.B.H. Siddiqui & Anr. ... Respondents.

....

Mr. S.K. Talsania, Sr. Advocate with Mr. J.S. Saluja i/b. M.V. Kini for the Petitioner.

Mr. F.L. Berarwalla with Mr. R.M. Vaity for Respondent No.1.

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CORAM : DR. D.Y.CHANDRACHUD,J.

19TH JANUARY 2007.

ORAL JUDGMENT :

1. There are two Petitions before the Court, one by the employer, the BEST Undertaking, and the second by the Workman. The workman was engaged by the BEST Undertaking on 15th September 1987 as a Medical Attendant at Santacruz Depot. The allegation is that on 5th February 1996, a Security Guard by the name of Shri Diwate was on duty at Santacruz Depot at Post No.1 at about 16.00 hours. At that time, a workman of the Undertaking (badge No.942624) by the name of Shri Ashok Demkar came to Shri Diwate and gave him a form of the Employees' Co-operative Credit Society to be given to the Society's Office. It is alleged that at about 16.30 hours, the chargesheeted workman came to Post No.1 and demanded the Credit Society's form from Shri Diwate, who however refused to hand over the same. It is alleged that the First Respondent got annoyed and threatened Shri Diwate that he would see him after he came out from the Depot. The First Respondent was alleged to have abused Mr. Diwate. The allegation is that at 23.30 hours, Mr. Diwate came out of the premises of the Bus Depot

and while he was waiting at the bus stop of Route No.4 Ltd., the First Respondent abused and assaulted him. Shri Diwate then went back to the Depot and informed the Havaldar on duty about the incident and was taken to the hospital for first aid. On 6th December 1996, Shri Diwate lodged a complaint at the Police Station. According to the Undertaking, on 2nd January 1997, a report regarding the above incident was submitted by the Assistant Security Officer, Goregaon alongwith the statement of Shri Diwate and of two other employees Shri S.A. Nimaj and Shri G.G. Chandorkar together with the police complaint and medical papers.

2. On 20th March 1997, the First Respondent was chargesheeted for misconduct under Standing Orders 20(i), 20(k) and 20(r). A domestic enquiry was conducted under the provisions of the Standing Orders pertaining to the Undertaking. The Disciplinary Enquiry was conducted by the Traffic Officer (Santacruz). The Chargesheeted workman was defended by a Union representative. The Enquiry Officer came to the conclusion that the misconduct was proved. The record of the workman was found to

be unsatisfactory. On 26th September 1997, the workman was awarded the punishment of dismissal from service. The first and second departmental appeals were dismissed respectively on 8th December 1997 and 19th June 1998.

3. On 5th November 1998, the workman filed an application under Sections 78 and 79 of the Bombay Industrial Relations Act, 1946. The Undertaking filed its written statement. By an order dated 25th February 2000, the Labour Court held that the enquiry was fair and proper. By a subsequent order dated 28th October 2004, the Labour Court came to the conclusion that the findings of the Enquiry Officer were not proper. An order of reinstatement with 30% backwages and continuity of service was passed. The Undertaking filed an Appeal before the Industrial Court under Section 84 of the Bombay Industrial Relations Act, 1946 for challenging the order of the Labour Court on the point of perversity. It was further submitted that even assuming that the Labour Court was justified in holding that the misconduct was not proved in the disciplinary enquiry and the findings of the

enquiry was perverse, the Undertaking should have been given an opportunity of leading evidence to substantiate the charge of misconduct. The Industrial Court while disposing of the Appeal, reversed the findings of the Labour Court, in so far it was held that the findings in the enquiry were perverse. The Industrial Court held that the finding of misconduct stood established. The Industrial Court held, however, that the ends of justice would be served by granting reinstatement with backwages quantified at 30% as awarded by the Labour Court.

4. The workman has filed a Petition under Article 226 of the Constitution while the management has challenged the order of the Industrial Court in so far as it grants reinstatement with 30% backwages.

5. Counsel appearing on behalf of the Management submitted that (i) The Industrial Court has arrived at the finding that the charge of assault against the co-employee was duly established; (ii) Under Standing Order 20(r) an act of assault on a fellow employee would constitute a misconduct even if it

is not committed on the premises of the establishment; (iii) In any event, there was a sufficient nexus between the misconduct and the employment of the chargesheeted workman with the Undertaking; (iv) The misconduct which is found to be established is serious and the Industrial Court erred in holding that an assault on a co-employee was a minor incident. In the circumstances, it was urged before the Court that the Industrial Court ought not to have granted reinstatement either with or without backwages.

6. On the other hand, on behalf of the chargsheeted workman, it is urged that in the present case the workman was victimized for a extraneous reasons. Counsel appearing on behalf of the workman also submitted that even though in the grounds which are appended to the petition there was no specific challenge to the finding of misconduct that was arrived at by the Industrial Court an unduly technical view need not be taken in the matter and the workman may be permitted to challenge that part of the order of the Industrial Court in so far as it held that the misconduct was

established and that there was no perversity in the findings arrived at by the Enquiry Officer.

7. In the present case, the charge of misconduct arose under Standing Orders 20(i), 20(k) and 20(r) of the Certified Standing Orders which provide as follows :-

"**Standing Order 20(i) :** drunkenness or riotous, disorderly, insolent or indecent behaviour or any act subversive of discipline on the premises of the Undertaking or at the place of employment or in the performance of the Undertaking's duties or while wearing the uniform and/or the badge of the Undertaking.

Standing Order 20(k) : breach of any rules or regulation or instruction for the maintenance and running of any department.

Standing Order 20(r) : assault on or intimidation of a superior officer or officer or fellow-employee or employees of the Undertaking or while on duty or wearing the Undertaking uniform assaulting or

intimidating or being deliberately discourteous to the Undertaking's passengers or intending passenger."

8. Now, under Standing Order 20(i) the act of misconduct consists of drunkenness or riotous, disorderly, insolent or indecent behaviour or any act subversive of discipline. This act of misconduct has to be committed (i) on the premises of the Undertaking; or (ii) at the place of employment; or (iii) in the performance of the Undertaking's duties; or (iv) while wearing the uniform or the badge of the Undertaking. Under Standing Order 20(r), on the other hand the act of misconduct consists of an assault on or an intimidation of a superior officer, officer or fellow-employee or employee of the Undertaking while on duty or wearing the Undertaking's uniform. That act of assault need not have been committed on the premises of the undertaking. A qualification in regard to the place of assault is not incorporated in Standing Order 20(r). This position in regard to the interpretation of Standing Order 20(r) has been accepted in an

unreported Judgment of a Division Bench of this Court consisting of the then Acting Chief Justice, Mr. Justice M.L. Pendse and Mr. Justice S.N. Jhunjhunuwala delivered on 6th April 1995 in **Municipal Corporation of Greater Bombay V/s. P.V. Pujari and Ors.** (Appeal No. 254 of 1954 in Writ Petition No.1898 of 1990). In that case, the act of misconduct which consisted of an assault was committed on a co-employee near Dadar Terminus. The Division Bench while noting that the incident had not taken place on the premises of the establishment or at the place of employment held that the misconduct would fall under clause 20(r) of the Standing Orders :-

> " In the present case, it is not in dispute that the assault on Nangre was not on the premises of the Undertaking or at the place of the employment, but on a public street. The misconduct, therefore, falls within clause 20(r) of Standing Orders. The said clause inter alia provides that when an employee assaults a superior officer or officers or fellow-employee of the Undertaking, then that amounts to misconduct."

The Division Bench held that though the assault was on a public road, it had a direct nexus to the activities at the place of employment in view of

the finding that the act was the result of union rivalry.

9. The Labour Court while interpreting the provisions of Standing Order 20(r) held that the assault had taken place at a bus-stop and the employee who was assaulted was neither on duty nor he was wearing a uniform of the Undertaking. The Labour Court held that nothing had been filed on the record to show that the bus-stop was owned by the Undertaking and constituted its premises. This aspect of the finding of the Labour Court is patently contrary to the plain terms of Standing Order 20(r). The Industrial Court has, therefore, justifiably corrected the finding by holding that in respect of an assault on a fellow employee, Standing Order 20(r) does not require that it should have necessarily been at the premises of the employment. The view of the Industrial Court is consistent with the language of Standing Order 20(r) as well as the Judgment of the Division Bench dated 6th April 1995, noted above.

10. In so far as the merits of the charge are concerned, the Industrial Court noted that the record of the enquiry was produced before the Court. The Labour Court had doubted the statement of Mr. Diwate, the Security Guard, who was assaulted by the chargesheeted workman on the ground that there was no immediate disclosure to a superior officer. The Industrial Court, however, noted that soon after the alleged incident of assault took place on the night of 5th December 1996, the assaulted workman immediately contacted the Police and lodged a report upon which a complaint of a non-cognizable offence was registered and the employee was referred for a medical checkup. The Medical Certificate was produced during the enquiry and there was a reference to the incident of assault which occurred at 11.35 p.m. On medical examination, a swelling on the left corner of the eye of the assaulted workman was found. The Industrial Court noted that the copy of the Police complaint was produced on the record. The statement of another Security Guard was that the assailant had run away. As regards the earlier incident, the Industrial Court

found that there was the evidence of an employee by the name of Chandorkar. The Labour Court had held that there was no independent corroboration of the evidence of the assaulted workman. The Industrial Court has correctly come to the conclusion that the requirement of corroboration is not a universal rule of uniform application. Particularly in the context of a domestic enquiry, where the strict rules of evidence do not apply, it is primarily for the Enquiry Officer to determine as to whether the evidence of the assaulted workman should be accepted. The Industrial Court held, relying on the statement of the assaulted workman and the other material on the record that there was in fact an assault on Shri Diwate when he was at the bus stop after having been on duty. For the purpose of the domestic enquiry, this was held to be adequate to sustain the finding of misconduct.

11. The approach of the Industrial Court on the finding of misconduct cannot be regarded as suffering from perversity. The Labour Court had approached the issue as if it was conducting a criminal trial by seeking to rely upon what it

perceived to be some contradictions in the evidence. The Industrial Court has correctly applied the test which under law must govern a disciplinary enquiry. A disciplinary enquiry is neither governed by the strict rules of evidence nor for that matter is the standard of proof, proof beyond reasonable doubt which applies to a criminal trial. In a disciplinary enquiry, the Enquiry Officer has to determine whether the misconduct is proved on a pre-ponderance of probabilities. In correcting the approach of the Labour Court therefore, the Industrial Court cannot be said to have been in error. There is absolutely no material on the record to sustain the submission urged on behalf of the workman that he has been victimized. Counsel appearing on behalf of the workman in fact fairly conceeded before the Court that material on victimisation is not available on the record but the submission was that many things cannot be brought on record. Obviously, such a submission cannot be accepted having regard to the well settled principle of law that a charge of the victimisation has to be pleaded and proved by means of cogent evidence.

12. In so far as the past record of the workman is concerned, it has come on the record that the chargesheeted workman was subjected to disciplinary penalties in the past, details of which are as follows :-

" **Date**	**Punishment**
11-12-1989	Reduced in grade by one step for one year.
18-04-1990	Suspended for 15 days.
11-03-1991	Reduced in grade by two steps permanently.
11-08-1992	Reduced in grade by one step for one year.
30-09-1994	Reduced in grade by two steps permanently."

13. The Labour Court has in fact accepted the submission of the management and found no force in the argument of the workman that his past record was satisfactory or that the Enquiry Officer had failed to consider the service record. The Industrial Court in Appeal has duly considered the past service record in paragraph 13 of the Judgment and has come to the conclusion that the record was not satisfactory.

14. Despite holding that the misconduct was duly established and that the findings of the Enquiry Officer did not suffer from any perversity, the Industrial Court interfered with the punishment of dismissal on the ground that the incident was minor and that any imposition of an order of dismissal would be disproportionate. There is merit in the submission that has been urged on behalf of the Undertaking that the approach of the Industrial Court on the question of punishment ex-facie suffers from legal perversity and would warrant interference of this Court under Article 226 of the Constitution. An act of assault cannot

be regarded as a minor breach of the rules of discipline, as was laid down by the Supreme Court in **Hombe Gowda Educational Trust v/s. State of Karnataka** (2006) 1 SCC 430. In another recent judgment in **Mahindra and Mahindra Ltd. V/s. N.B. Narawade** (2005) 1 CLR 803, the Supreme Court had similarly held that the use of abusive language by an employee against a superior officer would similarly not be tolerated in a civilized society. In **Hombe Gowda's case,** the Supreme Court noted the recent trend in the decisions of the Supreme Court to seek a balance between the earlier approach to industrial relations where the interests of the workman were sought to be protected, with the object of ensuring industrial growth. The Supreme Court has noted that it has now been noticed that a breach of discipline cannot be countenanced and the Industrial tribunal would not normally interfere with the quantum of punishment imposed by the employer unless an appropriate case is made out.

15. In the present case, the statement of the assaulted workman clearly shows that there was a nexus between the act of assault and the employment

of the chargesheeted workman with the Undertaking. The assaulted workman has deposed to the incident which had taken place during the course of the second shift on 5th December 1996 at 16.00 hours. One of the bus drivers had approached the Security Guard Diwate to help in filling up the Society's form. The chargesheeted workman had then approached him at 16.30 hours and demanded a copy of the form. When the complainant workman refused to do so, he was threatened with dire consequences outside the premises of the Undertaking. The incident which took place thereafter at 11.30 p.m. was in continuation of what had transpired in the earlier part of the evening, when the complainant workman was on the premises of the Undertaking. The act of assault therefore clearly has nexus with the relationship of employment. The Industrial Court was in error in interfering with the penalty that was imposed by the employer.

16. For all these reasons, Writ Petition 1282 of 2006 filed by the employer shall have to be allowed by setting aside the order of the Industrial Court to the extent to which it grants

re-instatement with 30% backwages to the chargesheeted workman. Rule is accordingly made absolute in terms of prayer Clause (b), in Writ Petition No.1282 of 2006.

17. Writ Petition No.1136 of 2006 filed by the workman shall in the circumstances stand dismissed.

18. In the circumstances of the case, there shall be no order as to costs.